**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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|---|---|---|
| UNILOC USA, INC. and UNILOC LUXEMBOURG S.A., | § | |
| | § | CIVIL ACTION NO. 2:17-cv-0346-JRG |
| Plaintiffs, | § | |
| | § | **JURY TRIAL DEMANDED** |
| v. | § | |
| | § | |
| KIK INTERACTIVE, INC., | § | |
| | § | |
| Defendant. | § | |
| | § | |

## ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together "Uniloc"), as and for their original complaint against defendant, Kik Interactive, Inc. ("Defendant" or "Kik"), allege as follows:

## THE PARTIES

1. Uniloc USA, Inc. ("Uniloc USA") is a Texas corporation having a principal place of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano Texas 75024. Uniloc also maintains a place of business at 102 N. College, Suite 603, Tyler, Texas 75702.

2. Uniloc Luxembourg S.A. ("Uniloc Luxembourg") is a Luxembourg public limited liability company having a principal place of business at 15, Rue Edward Steichen, 4th Floor, L-2540, Luxembourg (R.C.S. Luxembourg B159161).

3. Uniloc Luxembourg owns several patents in the field of text/voice instant messaging.

4. Upon information and belief, Defendant is a Canadian corporation having a principal place of business at 420 Weber Street North, Suite I, Waterloo, Ontario N2L 4E7, Canada

and offers its products, including those accused herein of infringement, to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas. Among other things, Defendant engages in marketing activities that promote the use of the Kik Messenger app and its associated system.

**JURISDICTION AND VENUE**

5. Uniloc brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Defendant has committed acts of infringement in this judicial district, and/or have purposely transacted business involving the accused products in this judicial district, including sales to one or more customers in Texas.

7. Defendant is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and judicial district, including: (A) at least part of its past infringing activities; (B) regularly doing or soliciting business in Texas; and/or (C) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

**COUNT I**

(INFRINGEMENT OF U.S. PATENT NO. 8,571,194)

8. Uniloc incorporates by reference the above paragraphs.

9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,571,194 ("the '194 Patent"), entitled SYSTEM AND METHOD FOR INITIATING A CONFERENCE CALL issued on October 29, 2013. A true and correct copy of the '194 Patent is attached as Exhibit A hereto.

10. The ‘194 Patent spent over three years being examined at the United States Patent and Trademark Office. During examination of the ‘194 Patent, trained United States Patent Examiners considered at least twenty-six (26) references before determining that the inventions claimed in the ‘194 Patent deserved patent protection. Such references include, for example, various references from Microsoft Corporation, International Business Machines Corporation, Nortel Networks Limited, and Bell Canada.

11. Uniloc USA is the exclusive licensee of the ‘194 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

12. Defendant has marketed and currently markets a voice and messaging application (or “app”) under the name “Kik Messenger.” Kik Messenger can be downloaded to a mobile device through sites such as Google Play, the Apple App Store, the Microsoft App Store, and Amazon app store.

13. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant’s Kik Messenger voice and messaging application works.

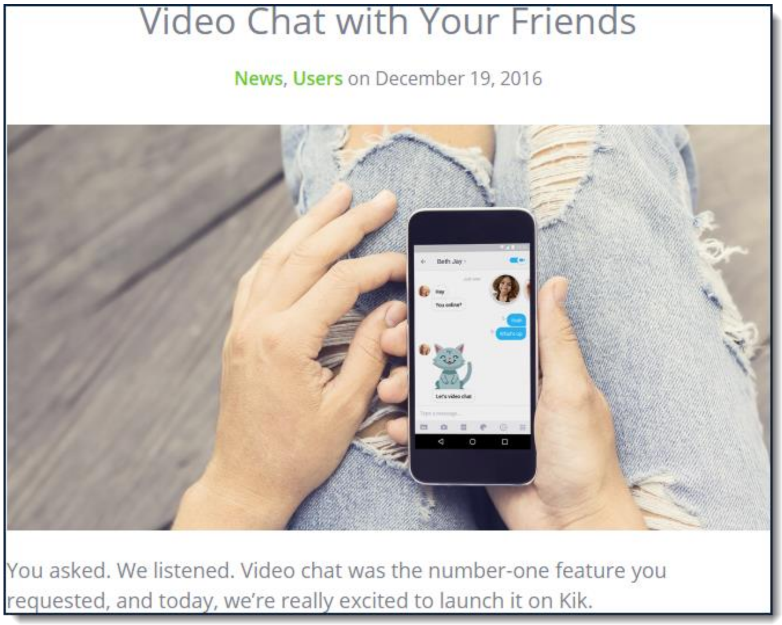
14. The following illustration shows a chat interface provided by Kik Messenger:

9:41 AM
Michaela A
Hey
Hey
What's up
Just chilling
Lol
I'm so bored
Let's video chat
Ok!
Type a message...

**Source**: https://blog.kik.com/2016/12/19/video-chat-with-your-friends/.

15. One of the top five reasons Kik lists individuals should download the app is because one can video chat with friends. *See* https://blog.kik.com/2017/02/13/top-5-reasons-why-you-should-download-kik.

16. The following illustration shows video chatting was the number one feature requested by users of Kik:


Video Chat with Your Friends
News, Users on December 19, 2016
You asked. We listened. Video chat was the number-one feature you requested, and today, we're really excited to launch it on Kik.

**Source**: https://blog.kik.com/2016/12/19/video-chat-with-your-friends/

17. The following illustrations shows using Kik Messenger, a conference call can be initiated with multiple participants by toggling a video button

4:21 PM
100%
Tyler, Tara, Beth, Sam, J...
Same
I'm so hungry

**Source**: https://blog.kik.com/2017/02/13/top-5-reasons-why-you-should-download-kik/

kik·
Kik
@Kik
Follow
Finally! It's here. Video chat on Kik! I can't even… if you could see my face you would… well, you would probably be video chatting on Kik.
Tyler, Tara, Beth, Sa...
I'm so excited
Omg me too
So cool!
kik·
RETWEETS
53
LIKES
117
6:55 AM - 19 Dec 2016

**Source**: https://twitter.com/kik/status/810861199218905088

18. The following illustration shows how one starts a video chat from a chat session with a single-toggle:

## HOW DO I USE VIDEO CHAT?

Video Chat is a great way to chat with your friends face to face.

To start or join a Video Chat in either a private group or with one of your friends:

1. Open the chat with the group or person you want to Video Chat with
2. In the top right corner, tap the **Video Chat toggle**

When you start or join the Video Chat, you'll see your Video Chat bubble pop up. Once there are two or more people in the Video Chat, your bubble will be hidden to the right of your screen, but you can always check yourself out by swiping left on the bubbles!

You can mute/unmute anyone in the Video Chat (including yourself) by tapping on the person's Video Chat bubble.

To leave a Video Chat, you can tap the Video Chat toggle to turn it off.

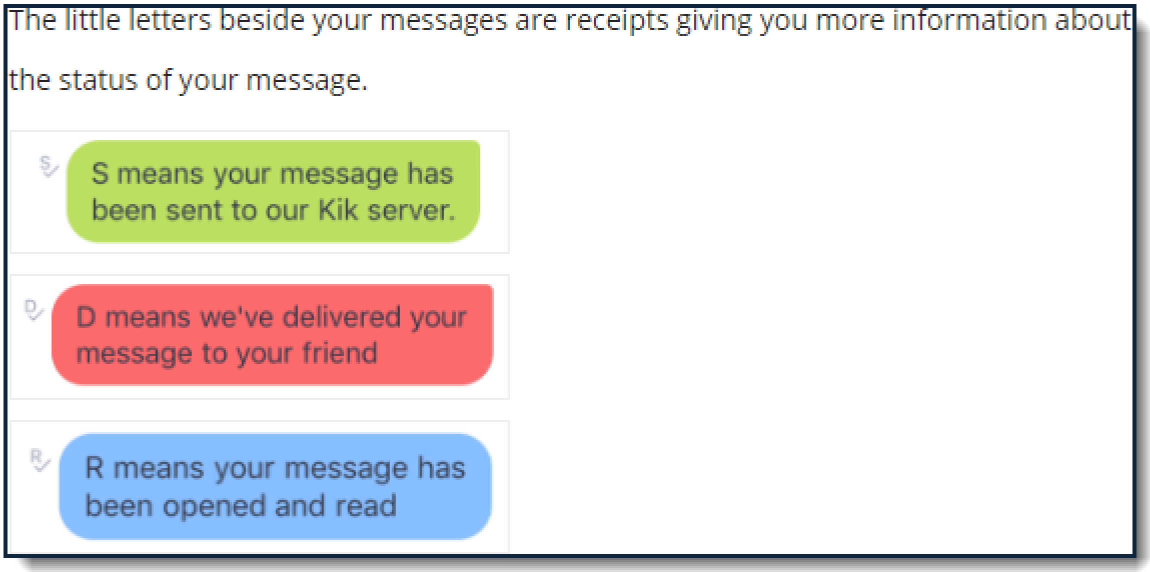
**Source**: https://kikinteractive.zendesk.com/hc/en-us/articles/115000305107

19. The following illustration shows exchanging IM messages between a first party and at least one other party, the first party and the at least one other party being current participants to an IM session.

9:41 AM
Michaela A >
Hey
Hey
What's up
Just chilling
Lol
I'm so bored
Let's video chat
Ok!
Type a message...

**Source**: https://blog.kik.com/2016/12/19/video-chat-with-your-friends/.

20. The following illustrations show how Kik sends to the first party an indication of whether the at least one other party is communicably connected to the IM session.


The little letters beside your messages are receipts giving you more information about the status of your message.

S means your message has been sent to our Kik server.

D means we've delivered your message to your friend

R means your message has been opened and read

**Source**: https://kikinteractive.zendesk.com/hc/en-us/articles/217681888-What-do-S-D-and-R-mean-

**...** Three dots mean that the app is trying to establish a connection. Your message will change to **S** as soon as a connection is established. If you see the three dots for an extended period of time, check your data and/or Wi-Fi connection.

**!** Red exclamation mark means there is an error sending your message. In this case, you'll need to send your message again.

A faded D appears next to messages sent to iPhones and Windows Phones. It means that we've sent the push notification of your message to your friend but they haven't opened the app to receive the message on their phone. Once they open the app, you'll see a solid **D**.

**Source**: https://kikinteractive.zendesk.com/hc/en-us/articles/217681888-What-do-S-D-and-R-mean-

21. The following shows how Kik receives a request from the first party to establish voice communication amongst current participants of the IM session without requiring registration with a conference call server for establishing the voice communication by potential members including the first party and the at least one other party, the request lacking a specific identification of the at least one other party.

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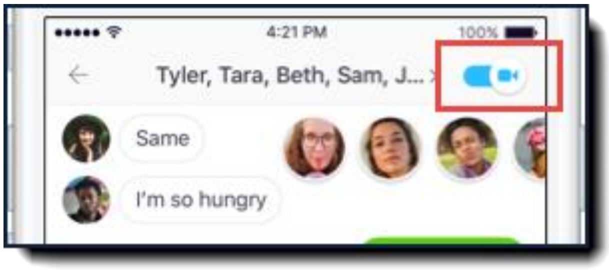
You can mute/unmute anyone in the Video Chat (including yourself) by tapping on the person's Video Chat bubble.

To leave a Video Chat, you can tap the Video Chat toggle to turn it off.

**Source**: https://kikinteractive.zendesk.com/hc/en-us/articles/115000305107



**Source**: https://blog.kik.com/2017/02/13/top-5-reasons-why-you-should-download-kik/

kik·
Kik
@Kik
Follow
Finally! It's here. Video chat on Kik! I can't even… if you could see my face you would… well, you would probably be video chatting on Kik.
Tyler, Tara, Beth, Sa...
I'm so excited
Omg me too
So cool!
kik·
RETWEETS
53
LIKES
117
6:55 AM - 19 Dec 2016

**Source**: https://twitter.com/kik/status/810861199218905088

22. The following shows how Kik determine, after reception of the request, the at least one other party from information associated with the IM session.

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Video Chat is a great way to chat with your friends face to face.

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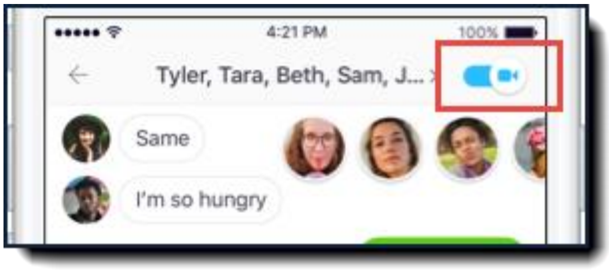
2. In the top right corner, tap the **Video Chat toggle**

When you start or join the Video Chat, you'll see your Video Chat bubble pop up. Once there are two or more people in the Video Chat, your bubble will be hidden to the right of your screen, but you can always check yourself out by swiping left on the bubbles!

You can mute/unmute anyone in the Video Chat (including yourself) by tapping on the person's Video Chat bubble.

To leave a Video Chat, you can tap the Video Chat toggle to turn it off.

**Source**: https://kikinteractive.zendesk.com/hc/en-us/articles/115000305107



**Source**: https://blog.kik.com/2017/02/13/top-5-reasons-why-you-should-download-kik/

Kik
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Finally! It's here. Video chat on Kik! I can't even… if you could see my face you would… well, you would probably be video chatting on Kik.
Tyler, Tara, Beth, Sa...
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Omg me too
So cool!
kik·
RETWEETS
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LIKES
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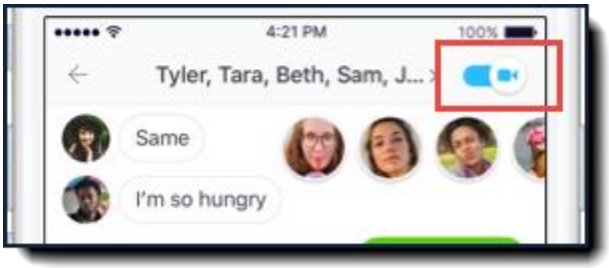
6:55 AM - 19 Dec 2016

**Source**: https://twitter.com/kik/status/810861199218905088.

23. The following shows how Kik, after determining the at least one party, the voice communication is established between the first party and those of the at least one other party.


4:21 PM
100%
Tyler, Tara, Beth, Sam, J...
Same
I'm so hungry

**Source**: https://blog.kik.com/2017/02/13/top-5-reasons-why-you-should-download-kik/

Kik
@Kik
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Finally! It's here. Video chat on Kik! I can't even… if you could see my face you would… well, you would probably be video chatting on Kik.
Tyler, Tara, Beth, Sa...
I'm so excited
Omg me too
So cool!
kik·
RETWEETS
53
LIKES
117
6:55 AM - 19 Dec 2016

**Source**: https://twitter.com/kik/status/810861199218905088.

24. Defendant has directly infringed, and continues to directly infringe one or more claims of the '194 Patent, including at least Claim 16, in this judicial district and elsewhere in Texas, literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their voice and messaging application during the pendency of the '194 Patent which inter alia comprises instructions for exchanging instant messages between two or more parties, sending information indicating whether a party is communicably connected to the IM session, receiving a request for voice communications that lacks specific information as to at

least one other part, determining the at least one other party after receiving the request, and establishing the voice communication after determining the at least one other party.

25. In addition, should Defendant's voice and messaging application be found to not literally infringe one or more claims of the '194 Patent, Defendant's accused products would nevertheless infringe one or more claims of the '194 Patent, including at least Claim 16, under the doctrine of equivalents. More specifically, the accused voice and messaging application performs substantially the same function (contains instructions for implementing an IM to voice/video call capability), in substantially the same way (comprising computer readable instructions contained in or loaded into non-transitory memory) to yield substantially the same result (effecting an instant message to voice/video call). Defendant would thus be liable for direct infringement under the doctrine of equivalents.

26. Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the '194 Patent, including at least Claim 16, in this judicial district and elsewhere in the Texas by, among other things, actively inducing the using, offering for sale, selling, and/or importation of Defendant's messaging software. Defendant's customers who use such software in accordance with Defendant's instructions directly infringe one or more of the above identified claims of the '194 Patent in violation of 35 U.S.C. § 271.

27. Defendant instructs their customers in the use of their messaging software through Internet demonstrations, training videos, brochures and administration, maintenance, installation and/or user guides, such as those located at the following:

https://kikinteractive.zendesk.com/hc/en-us/articles/115000305107-How-do-I-use-Video-Chat-

Defendant is thereby liable for infringement of the '194 Patent pursuant to 35 U.S.C. § 271(b).

28. Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the ‘194 Patent, including at last Claim 16, by among other things, contributing to the direct infringement by others, including without limitation users of their messaging software, by making, using, offering to sell, or selling, in Texas, and/or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in the practicing a patent process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the ‘194 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

29. For example, the Defendant’s messaging software module that allows users to initiate a call from an instant message window is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such software module is a material part of the invention and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendant is liable for infringement pursuant to 35 U.S.C. § 271(c).

30. Defendant will have been on notice of the ‘194 Patent since, at the latest, the service of this complaint. By the time of trial, Defendant will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of one or more claims of the ‘194 Patent, including at least Claim 16.

31. Defendant may have infringed the ‘194 Patent through other software, currently unknown to Uniloc, utilizing the same or reasonably similar functionality, including other versions of their voice and messaging application. Uniloc reserves the right to discover and pursue all such additional infringing software.

**COUNT II**

(INFRINGEMENT OF U.S. PATENT NO. 7,853,000)

32. Uniloc incorporates by reference the above paragraphs.

33. Uniloc Luxembourg is the owner, by assignment, of 7,853,000 ("the '000 Patent"), entitled SYSTEM AND METHOD FOR INITIATING A CONFERENCE CALL" issued on December 14, 2010. A true and correct copy of the '000 Patent is attached as Exhibit B hereto.

34. The '000 Patent was examined at the United States Patent and Trademark Office for nearly a year. During examination of the '000 Patent, trained United States Patent Examiners considered at least five (5) references before determining that the inventions claimed in the '000 Patent deserved patent protection. Such references include, for example, various references from Comverse Ltd., and Lightbridge, Inc.

35. Uniloc USA is the exclusive licensee of the '000 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

36. Defendant has directly infringed, and continues to directly infringe one or more claims of the '000 Patent, including at least Claim 1, in this judicial district and elsewhere in Texas, literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling devices with their voice and messaging application during the pendency of the '000 Patent which *inter alia* comprises instructions for indicating a plurality of potential targets then being connected to an instant messaging service and participating in a given instant messaging session with a conference call requester and generating a conference call request responsively to a single request by the conference call requester where a conference call is automatically established.

37. In addition, should Defendant's voice and messaging application be found to not literally infringe one or more claims of the '000 Patent, Defendant's accused products would nevertheless infringe one or more claims of the '000 Patent, including at least Claim 1, under the doctrine of equivalents. More specifically, the accused voice and messaging application performs substantially the same function (implementing an IM to voice/video call capability), in substantially the same way (through instructions) to yield substantially the same result (effecting an instant message to voice/video call). Defendant would thus be liable for direct infringement under the doctrine of equivalents.

38. Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the '000 Patent, including at least Claim 1, in this judicial district and elsewhere in Texas by, among other things, actively inducing the using, offering for sale, selling, and/or importation of Defendant's messaging software. Defendant's customers who use such devices and software in accordance with Defendant's instructions directly infringe one or more of the above identified claims of the '000 Patent in violation of 35 U.S.C. § 271

39. Defendant instructs their customers in the use of their messaging software through Internet demonstrations, training videos, brochures and administration, maintenance, installation and/or user guides, such as those located at the following:

https://kikinteractive.zendesk.com/hc/en-us/articles/115000305107-How-do-I-use-Video-Chat-

Defendant is thereby liable for infringement of the '000 Patent pursuant to 35 U.S.C. § 271(b).

40. Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the '000 Patent, including at least Claim 1, by among other things, contributing to the direct infringement by others, including without limitation users of their messaging software, by making, using, offering to sell, or selling, in Texas, and/or importing a component of a patented

machine, manufacture, or combination, or an apparatus for use in the practicing a patent process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the ‘000 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

41. For example, the Defendant’s messaging software module that allows users to initiate a call from an instant message window is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such software module is a material part of the invention and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendant is liable for infringement pursuant to 35 U.S.C. § 271(c).

42. Defendant will have been on notice of the ‘000 Patent since, at the latest, the service of this complaint upon them. By the time of trial, Defendant will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more claims of the ‘000 Patent, including at least Claim 1.

43. Defendant may have infringed the ‘000 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Android Messaging app and associated system. Uniloc reserves the right to discover and pursue all such additional infringing software/devices.

## PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against Defendant as follows:

(A) that Defendant has infringed the ‘194 Patent and ‘000 Patent;

(B) awarding Uniloc its damages suffered as a result of Defendant’s infringement of the ‘194 Patent and ‘000 Patent pursuant to 35 U.S.C. § 284;

(C) enjoining each Defendant, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries and parents, and all others acting in concert or privity with it from infringing the '194 Patent and '000 Patent pursuant to 35 U.S.C. § 283;

(D) awarding Uniloc its costs, attorneys' fees, expenses and interest; and

(E) granting Uniloc such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.

Dated: April 21, 2017

Respectfully submitted,

*/s/ James L. Etheridge*

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